



Comptroller General
of the United States

Washington, D.C. 20548

153555

Decision

Matter of: Richard C. Sherwood--Real Estate Sale Expenses

File: B-258268

Date: January 25, 1995

DIGEST

An employee, upon separating from his spouse, voluntarily left the family home and moved into a nearby apartment before being notified of his transfer of official duty station. He may not be reimbursed selling expenses for the family residence because, for purposes of relocation allowances, an employee's residence is the place from which the employee regularly commutes to and from work, and in this case, that place was the employee's apartment.

DECISION

The Internal Revenue Service (IRS) requests a decision whether Mr. Richard C. Sherwood may be reimbursed for real estate expenses he incurred in the sale of a home incident to his transfer from Washington, D.C., to Philadelphia, Pennsylvania.¹ He may not be reimbursed.

BACKGROUND

Mr. Sherwood states that he applied for several positions in November 1992, and was first notified that he had been accepted for the Philadelphia position on or about December 28, 1992. On December 2, 1992, before receipt of the notification, he separated from his spouse and moved from the family residence into an apartment from which he continued to commute to and from his Washington duty station until the effective date of his transfer, March 8, 1993.

Subsequently, the Sherwoods divorced and sold the family residence. Mr. Sherwood submitted a claim for real estate expenses incurred in that transaction, which the agency denied because the family residence was not the residence from which he regularly had been commuting to and from work at the time he first received notice of his transfer, as

¹The request was submitted by the Chief, Office of Travel Management and Relocation, Internal Revenue Service.

required by IRS and government-wide travel regulations. See Internal Revenue Manual, Ch. 920(1)(c), Nov. 12, 1987, and Federal Travel Regulations (FTR) 41 C.F.R. § 302-6.1(d) (1993).

Mr. Sherwood notes that at no time before the divorce was there a legal separation or a separation agreement dealing with the residence. He adds that he continued to make the mortgage payments on the family residence and that he kept his personal effects there and frequently visited there to transport his children to school functions and other activities. He asserts his case is more like that of an employee on temporary duty at the time he first learned of his transfer.

OPINION

The FTR requires that "The dwelling for which reimbursement of selling expenses is claimed was . . . the employee's residence at the he/she was first officially notified of his/her transfer." FTR § 302-6.1(d). For purposes of this section, an employee's residence means "the residence or other quarters from which the employee regularly commutes to and from work." FTR § 402-1.4(k).²

The various indications of residency offered by Mr. Sherwood, such as making the mortgage payments and making frequent visits to the home, are no substitute for the commuting requirement, which is expressly stated in the regulations. Edwin I. Gardner, B-246718, Apr. 29, 1992; Donald R. Stacy, 67 Comp. Gen. 396 (1988).³

We have recognized limited exceptions in situations where employees were temporarily occupying quarters other than their family residence when they were notified of their transfers. These situations include where an employee has been sent away by the agency on a temporary duty (TDY) assignment, the situation to which Mr. Sherwood analogizes his case. See e.g., B-188657, Dec. 30, 1977. In addition, see Timothy R. Glass, 67 Comp. Gen. 174 (1988), where the employee occupied his residence only on his nonworkdays because of remodeling that was being done during the week. See also, E.L. Jackson, B-166270, Mar. 21, 1969. However, in the TDY case the employee was away temporarily on official duty, and in the Glass and Jackson cases the employees had demonstrated a "definite intent" to occupy the residence when the work was completed. In Mr. Sherwood's case, clearly he was not temporarily away from the residence because of official business. Also, there is no showing that he intended to reoccupy the residence. Accordingly, his situation does not fall within these exceptions.

²These provision implement 5 U.S.C. § 5724a(a)(4), and have the force and effect of law.

³Although these cases involve family residences that were not within commuting distance of the employee's old duty station, the dispositive fact in each case was not the location of the family residence, but rather, was the fact that the employee regularly commuted to and from his old duty station from a different residence.

In cases involving separated couples, we have allowed reimbursement to employees who were unable to occupy their family residences for reasons beyond their control. For example, in Charles R. Holland, B-205891, July 19, 1982, the employee had moved out of his family residence because, as part of divorce proceedings, he was subject to a court order barring him from the residence. A key fact noted in that decision was that the employee's absence from the family home was involuntary. See also Jesse A. Greer, B-189122, Nov. 7, 1977.

In this case, though, Mr. Sherwood was not barred from occupying the residence. That is, at the time he first learned of his transfer, Mr. Sherwood had not legally separated from his spouse and was not subject to a court order, or even a separation agreement, barring him from the residence. Nor is there evidence that Mr. Sherwood's absence from the residence was temporary. To the contrary, according to the record, from the time he moved out of the residence in December through March, when he transferred to Philadelphia, he never regularly commuted again from that residence. Therefore, we conclude that his residence for relocation expense reimbursement purposes was the apartment he was occupying and not the family home.⁴

Accordingly, the agency's denial of Mr. Sherwood's claim is affirmed.

Robert P. Murphy
General Counsel

⁴He may be entitled to expenses incurred in terminating a lease on the apartment, if any. FTR § 302-6.2(h).